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No. 84-16

In the Supreme Court

OF THE

United States

KENNETH CORY, LEO T. MCCARTHY, and
JESSE R. HUFF, members of the
California State Lands Commission,
Appellants,

VS.

WESTERN OIL & GAS ASSOCIATION, et al.,
Appellees.

On Appeal from the United States Court of Appeals for the Ninth Circuit

JOINT APPENDIX (Vol. III)

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Appeal docketed July 5, 1984
Probable jurisdiction noted October 1, 1984

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LEASE BETWEEN CITY OF LONG BEACH AND EXXON CORPORATION

LEASE AND LICENSE AGREEMENT

This Agreement is made and entered into, in duplicate, as of the 5th day of July, 1974, pursuant to Ordinance No. HD-1038, adopted by the Board of Harbor Commissioners of the City of Long Beach at its meeting of June 3, 1974, by and between the City of Long Beach, a municipal corporation, acting by and through its Board of Harbor Commissioners, hereinafter referred to as "City", and Exxon Corporation, a New Jersey corporation, with a place of business at 1800 Avenue of the Stars, Los Angeles, California 90067, hereinafter referred to as "Lessee".

WHEREAS, City and Powerine Oil Company, as Lessee, entered into a Lease and License Agreement as of January 1, 1963, pursuant to Ordinance No. HD-657 of the Board of Harbor Commissioners of the City of Long Beach, wherein Powerine Oil Company was granted a lease of certain property upon which it constructed a tank farm for the storage of fuel oil and petroleum products, and wherein it was granted an exclusive license and permit to lay, construct, use, operate, maintain, repair, and renew two (2) fuel oil-bunkering pipelines in certain areas for the purpose of bunkering ships with its fuel oil, together with certain optional rights; and

• • •

WHEREAS, Lessee and City entered into a new Lease and License Agreement as of July 6, 1972, to supplant the above-mentioned Lease and License Agreement, which incorporated rights, privileges and obligations of other agreements, terminated said Agreement and another agreement, and provided for leasing additional land and water areas, and related facilities from City, and for installation of additional storage and bunkering facilities as therein provided; and

WHEREAS, Lessee and City desire to enter into a new Lease and License Agreement to supplant the Lease and License Agreement entered into as of July 6, 1972 • • • ; and

WHEREAS, the construction, operation and maintenance of fuel oil-burning services by Lessee will further promote and aid commerce and navigation in the Port of Long Beach;

NOW, THEREFORE, in consideration of the foregoing, and of the covenants, conditions and agreements herein contained, City, for itself, its successors in interest and assigns, and Lessee, for itself, its successors in interest and assigns, do hereby respectively agree to keep and perform all of the covenants, conditions and agreements hereinafter provided to be kept and performed by City and Lessee, respectively, to wit:

1. *TERM.* The term of this Agreement shall commence as of the first day of the month following the date of execution hereof by the General Manager of the Long Beach Harbor Department, and shall terminate June 30, 2010.

This agreement may, at Lessee's option, be terminated as of the last day of June in 1990 or 2000. Such option to cancel shall be exercised by written notice given by Lessee to City on or before the first day of January in the year in which the Agreement is to be terminated.

2. *PREMISES.*

a. *Leased Premises.* Effective as of the commencement of the term of this Agreement, except as otherwise provided, City does hereby grant, and Lessee accepts:

(1) An exclusive lease of those certain premises on Pier A in the Harbor District of the City of Long Beach, containing approximately 160,886 square feet, and designated Parcel 1 on Harbor Department Draw-

ing HD 4-31 attached hereto and by this reference incorporated herein.

(2) An exclusive lease of those certain premises at Berth 211-A, Pier A, in the Harbor District of the City of Long Beach, containing approximately 15,412 square feet, and designated Parcel 2 on said Harbor Department Drawing HD 4-31 attached hereto.

(3) An exclusive lease of that certain water area at Berth 211-A in the Harbor District of the City of Long Beach, containing approximately 15,211 square feet, and designated Parcel 3 on said Harbor Department Drawing HD 4-31 attached hereto. City reserves the right to itself and third parties to use said water area for navigational purposes to the extent the same is not used by Lessee pursuant to this Agreement.

Said Parcels 1, 2 and 3 are referred to herein as the "Leased Premises" or the "premises". The legal descriptions of said parcels are set forth in Exhibit "A", attached hereto and by this reference incorporated herein.

b. *Licensed Premises.* Effective as of the commencement of the term of this Agreement, City does hereby grant, and Lessee accepts:

(1) An exclusive license and permit to lay, construct, use, operate, maintain, repair, and renew fuel oil and diesel fuel underground bunkering pipelines, and related surface and subsurface appurtenances and facilities, for the purpose of bunkering vessels with Lessee's own (within the contemplation of Paragraph 3d(1)) fuel oil or diesel fuel on Piers A, B, C, D, F, G and J at the berths served by the pipelines depicted on Harbor Department Drawings HD 3-149-1, HD 3-149-2 and HD 149-3 attached hereto and by this reference incorporated herein.

* * *

d. *Assigned Premises.* Effective as of the commencement of the term of this Agreement, City does hereby grant, and Lessee accepts, a tertiary berth assignment for use of the wharf and wharf premises and the water area adjacent thereto required for the berthing of vessels, at Berths 209 and 210, Pier A. Lessee's right to use said wharf and berth facilities is subject to (1) the preferential berth assignment of Berth 210 granted by the Bulk Commodity Terminal Lease (Document No. HD-1332) entered into as of May 2, 1966, as amended, by and between the City of Long Beach, acting by and through its Board of Harbor Commissioners, and Koppel Bulk Terminal, (2) the secondary berth assignment of Berths 209 and 210 granted by the Lease and License Agreement (Document No. HD-2238) entered into as of June 30, 1972, by and between the City of Long Beach, acting by and through its Board of Harbor Commissioners, and National Molasses Company, and (3) to the rights granted by that certain lease entered into as of November 4, 1970, between the City of Long Beach, acting by and through its Board of Harbor Commissioners, and Ocean Salt Co., Inc. (Document No. HD-2068) with respect to the location of the overhead conveyor system at Berth 209.

e. *Exceptions, Reservations and Encumbrances.* There are excepted and reserved from the Leased Premises, from the Licensed Premises and Optional Licensed Premises and from the Assigned Premises all minerals and mineral rights of every kind and character now known to exist or hereafter discovered, including, without limiting the generality of the foregoing, oil, gas and water rights, together with the full, exclusive and perpetual rights to explore for, remove and dispose of said minerals, or any part thereof, from said premises without, however, the right of surface entry.

This Lease and License Agreement and all rights granted to Lessee hereunder are subject to restrictions, reservations, conditions and encumbrances of record, including,

without limitation, the following legislative grants, to wit: Chapter 676, Statutes of 1911; Chapter 102, Statutes of 1925; and Chapter 158, Statutes of 1935; Chapter 29, Statutes of 1956, First Extraordinary Session; Chapter 138, Statutes of 1964, First Extraordinary Session; the Charter of the City of Long Beach, the federal navigational servitude and, in addition thereto, any off-record matters affecting said Leased Premises of which Lessee has actual notice.

3. *USES.*

a. *The Leased Premises.* Parcel 1 and 2 may be used by Lessee for the construction, erection, installation, use, operation, maintenance, repair, and renewal of tank storage for Lessee's fuel oil, diesel fuel, other petroleum products and crude oil, and for related appurtenances and facilities, including, but not limited to, necessary electrical pumping facilities, warehouses, and office buildings, in conjunction with the operation by Lessee of its fuel and diesel oil-bunkering services under this Agreement. Parcel 3 may be used for the berthing and mooring of vessels, including barges, and for their loading and unloading, in conjunction with Lessee's operations.

b. *The Licensed Premises.* The Licensed Premises shall be used by Lessee to lay, construct, operate, maintain, repair, remove, extend, alter, and renew pipelines for the transportation of Lessee's own (within the contemplation of Paragraph 3d(1)) crude oil, fuel oil, diesel fuel and other petroleum products from the Leased Premises to vessels, including barges, at the berths of the Port of Long Beach and return lines for flushing purposes, together with all traps, manholes, and related surface and subsurface appurtenances and facilities thereto, for ingress to and egress from the same, along the pipeline routes shown on said Drawings HD 3-149-1, HD 3-149-2 and HD 3-149-3.

c. *The Assigned Premises.* The Assigned Premises may be used for the berthing of vessels, including barges, thereat and for the loading and unloading and other disposition of liquid bulk commodities between said vessels and barges at said premises and the wharf premises, for the embarking and disembarking of passengers and crew members and their baggage, and for the loading and unloading of vessels' stores and supplies. Whenever said Assigned Premises, or any part thereof, are not required, in whole or in part, by Lessee for the uses permitted under this tertiary assignment, the General Manager shall have the right to, and may make, temporary assignments to any other person, firm or corporation to use said Assigned Premises, or any part thereof, as provided in Port of Long Beach Tariff No. 3, as the same may exist or may be hereafter amended, or the successor to such tariff.

d. Lessee's operations conducted upon the Leased, Licensed and Assigned Premises shall be restricted to the following:

(1) A proprietary operation in which title to the crude oil and refined petroleum products, chemicals, liquids, and dry cargo referred to above shall be vested in Lessee at the time such commodities pass over the wharf from vessel or barge, or shall become vested in Lessee at some point in Lessee's pipeline or storage system on the Leased Premises, Licensed Premises or Assigned Premises, in accordance with the provisions of a purchase or exchange agreement. Lessee may load crude oil, fuel oil, diesel fuel and refined petroleum products, chemicals, liquids, and dry cargo referred to above aboard common carriers by water or any other vessel common carriers by water or any other vessels or barges at the wharf structure located on the Leased, Licensed or Assigned Premises for use or carriage by said vessels or barges, provided Lessee has title to said commodities up to the time the same pass ship's rail.

(2) An operation whereby Lessee may receive, handle, load, unload, and transport crude oil and refined petroleum products, chemicals, liquids, and dry cargo referred to above, owned by others, provided that the same shall not be loaded into or discharged from vessels that are common carriers by water, as said term is defined in the Shipping Act, 1916, as amended.

• • •

4. *CONSTRUCTION OF IMPROVEMENTS BY LESSEE.* Lessee agrees to install, or have installed, at its sole cost and expense, fencing and fire protection equipment, as may be required by the Long Beach Fire Department, on the Leased, Licensed and Assigned Premises.

In addition to the improvements described above, Lessee may, at its sole cost and expense, construct, erect and install additional buildings, structures and improvements and may make alterations thereto and to existing improvements, buildings and structures upon the Leased Premises, and may construct, erect and install improvements and may make alterations thereto and to existing improvements upon the Licensed Premises, provided that such additional buildings, structures and improvements and alterations shall not be installed, erected, constructed or made except in accordance with (a) plans and specifications previously submitted to the General Manager and approved in writing by him, and (b) the covenants, conditions and agreements of this Agreement. Said approval shall not be unreasonably withheld.

5. *RENTAL.*

a. *Rental of Leased Premises.*

(1) *Parcel 1.* Lessee shall pay to City, as rental for the use of Parcel 1, the sum of Three Thousand Six Hundred Nineteen and 93/100 Dollars ($3,619.93) per month, in advance, on the first day of each calendar month while this Agreement is in effect.

(2) *Parcels 2 and 3.* Lessee shall pay to City, as rental for the use of Parcels 2 and 3, the sum of Two Thousand Five Hundred Fifty-Two and 58/100 Dollars ($2,552.58) per month, in advance, on the first day of each calendar month while this Agreement is in effect. • • •

(4) The foregoing rental for said Parcels 1, 2 and 3 shall be in lieu of tariff charges assessed by City in accordance with applicable Port of Long Beach tariffs, as hereinafter mentioned, but tariff charges shall be applicable when accruing in connection with Lessee's operations upon the Licensed and Assigned Premises as provided in Paragraph 7 herein.

b. *Rental of Licensed Premises.* Lessee shall pay to City, as rental for the use of the Licensed Premises, a sum computed from the pipeline rental fees prescribed in Section 7560.9 of the Municipal Code of the City of Long Beach, at the annual rates, in cents, per inch of nominal diameter (not including protective casing) per lineal foot per year of the pipelines installed and maintained pursuant to this Agreement, subject to such annual fee adjustments resulting from the application of the provisions of said Section 7560.9, as directed by the Board of Harbor Commissioners. Said Section 7560.9 provides for an annual adjustment of the base rates set forth therein, based on the "Index Number of Wholesale Prices" of the United States Bureau of Labor Statistics.

Said rental for the Licensed Premises shall be paid annually in advance; and in the event of an installation or removal or abandonment of pipeline facilities during an annual period, the payments otherwise due City for use of said Licensed Premises by such facilities shall be prorated for said annual period as of the end of the calendar month in which such installation, removal or abandonment is approved by City's Board of Harbor Commissioners. After

Lessee has completed each installation or abandonment of pipelines on the Licensed Premises, the rental may be adjusted on the basis of the actual length of pipelines in place in accordance with the lengths depicted on the "as-built" drawings to be furnished by Lessee.

• • •

7. *TARIFF CHARGES.* Lesseee shall pay, or cause to be paid, to City the total amount of all applicable charges accruing in connection with Lessee's operations upon the Licensed Premises and the Assigned Premises (including, but not limited to, wharfage, wharf demurrage, wharf storage and dockage) under the schedule of rates covering the use of wharves and wharf premises and other facilities and appliances owned, controlled or operated by the City of Long Beach, as the same have been or may be prescribed by the Board of Harbor Commissioners of the City of Long Beach in Port of Long Beach Tariff No. 3, as the same may exist or may be hereafter amended, or the successor to such tariff, or otherwise by law.

In connection with the payment of said tariff charges, Lessee shall file, or cause to be filed, statements as follows: (a) On or before the twentieth day following the departure of each vessel docking at berths in the Port of Long Beach served by Lessee's bunkering facilities, Lessee shall file, or cause to be filed, with the General Manager, on forms approved by City, a statement verified by the oath of Lessee's manager or other duly authorized representative, showing all charges which shall have accrued at said premises for dockage, wharfage and other applicable charges with reference to each such vessel; (b) On or before the tenth day of each month, Lessee shall file, or cause to be filed, with the General Manager, on forms approved by City, a statement verified by the oath of Lessee's manager or other duly authorized representative, showing all charges which shall have accrued at said premises for wharfage where the departure of a vessel is not involved, and for all wharf de-

murrage, storage and other charges, if any, during the preceding calendar month.

Lessee shall keep full and accurate records relating to its operations on said Leased, Licensed and Assigned Premises, and the records which are pertinent to the provisions of this Agreement shall be subject to inspection by representatives of City at any and all reasonable times during normal business hours, and copies may be made of any and all such records.

City agrees that it will not, during the term of this Agreement, control or limit any charge Lessee may make any of its customers for, or based upon, transportation of any fuel oil, diesel fuel, crude oil, or other petroleum products, chemicals, liquids or dry cargo commonly used or dealt in by those engaged in the petroleum industry, within or across the Leased, Licensed or Assigned Premises (this does not pertain to dockage or wharfage).

• • •

9. *DUTY TO REPAIR AND RESTORE.* Except as otherwise provided herein, Lessee shall operate, keep and maintain the Leased Premises and all improvements thereon, whether owned by City or Lessee, in good and substantial repair and condition, and shall make all necessary repairs and alterations thereto and perform all necessary maintenance thereof, all at its sole cost and expense.

Except as provided herein, City shall not be required at any time to make any improvements or repairs, or perform any maintenance whatsoever, on or for the benefit of the Leased, Licensed or Assigned Premises or any improvements of any kind constructed, erected or installed thereon.

Lessee agrees to provide proper containers for trash and to keep the Leased, Licensed and Assigned Premises free and clear of rubbish, debris and litter resulting from its operations at all times, and to keep and maintain all of said premises in a safe, clean, wholesome and sanitary

condition under all applicable federal, state, municipal and other laws, ordinances, rules and regulations. No offensive or refuse matter, nor any substance constituting any unnecessary, unreasonable or unlawful fire hazard, nor material detrimental to the public health, shall ever be permitted to be or remain on or be disposed of in water adjacent to the Leased, Licensed or Assigned Premises, and Lessee shall prevent such material or matter from being or accumulating upon said premises.

Upon the termination of this Agreement, whether by expiration or otherwise, all improvements of Lessee located on the Leased, Licensed or Assigned Premises shall, at the option of City, be removed by Lessee at Lessee's sole cost and expense; and Lessee shall restore the Leased Premises to a smooth graded, unimproved state and restore the Licensed Premises to the condition the same were in immediately prior to the commencement of such removal. City shall give written notice to Lessee of City's election, with respect to removal of the improvements, not later than ninety (90) days prior to the termination of this Agreement. City may so elect for Lessee to remove a portion or portions only of the improvements and, in such case, Lessee shall remove only the portion or portions specified by City in its written notice of election. All pipelines not removed pursuant to City's election shall be abandoned in place in accordance with the conditions specified by the General Manager.

10. *SPECIAL PROVISIONS RELATING TO THE LICENSED PREMISES.*

a. *Installation of Pipelines.* Lessee shall install pipelines underground or beneath the wharf apron at the schematic locations shown on said Harbor Department Drawings HD 3-149-1, HD 3-149-2 and HD 3-149-3, and at elevations and locations approved in writing by the General Manager. The pipelines hereby authorized shall be in-

stalled only in accordance with plans and specifications previously submitted to the General Manager of the Harbor Department with the application for this permit and as approved by him. * * * Relocation or alteration of other underground pipelines, and installations of any kind or nature, whether above or below ground, and whether owned by City or by third parties, required in connection with Lessee's installation of its pipelines and facilities shall be at the sole cost and expense of Lessee.

* * *

d. *Use of Lands by City.* City, its successors and assigns, shall have full use and enjoyment of the Licensed Premises, except as to the rights and privileges hereby granted to Lessee.

e. *Permit Not Exclusive.* The license and permit hereby granted for the construction, operation and maintenance of ships' fuel oil-bunkering services by said pipelines shall be exclusive. However, City reserves the right to grant to other persons, firms or corporations licenses and permits to lay, maintain, operate, repair, renew, and remove pipelines other than for ships' fuel-bunkering services.

f. *Alterations.* Lessee shall, at its own cost and expense, alter said pipelines and change the location thereof whenever and as often as City deems it convenient or necessary on account of any construction authorized, permitted or contemplated by City, and Lessee shall commence such alteration or change of location, or both, within thirty (30) days after the receipt of a written notice from City so to do and shall proceed to complete the same with due diligence thereafter; provided, however, that after the original location has been approved by City, the expense of alteration and relocation of a pipeline for the sole convenience of per-

sons other than City and Lessee shall be borne by such others.

• • •

g. *Repairs to Pipelines.* Whenever the pipelines shall suffer failure or incur damage which will cause or permit the escape of the contents therefrom, it shall be the duty of Lessee to immediately make such repairs as will insure the future safe and proper operation of said pipelines and facilities, and Lessee shall make such cleanup and repairs as shall be required by City. Lessee shall also be responsible for the repair or replacement of any property and facilities caused to be damaged by the occurrence of the escape of the contents from the pipelines.

h. *Subject to Encumbrances.* This license and permit is granted subject to any and all existing leases, easements, licenses, permits or other encumbrances, and City reserves the right to grant further permits, licenses, easements, franchises or leases in, over, upon, along or across the Licensed Premises and the Optional Licensed Premises for purposes other than ships' fuel oil-bunkering services. City reserves the right to dedicate the Licensed Premises, the Optional Licensed Premises, or any part thereof, or to grant an easement across said Licensed Premises, Optional Licensed Premises, or any part thereof, for street purposes. Lessee shall not be liable for rental for the immediate area affected to the extent that, during any rental period, it is so prevented from exercising its rights hereunder as to such area. All such further permits, licenses, easements, franchises and leases shall be so located that a minimum of interference with Lessee's use of the premises covered by this Agreement is encountered.

i. *City Not to Incur Expense.* City shall not, at any time or under any circumstances, be required to construct, reconstruct, maintain or repair the pipelines, appliances, attachments, or appurtenances thereto installed by Lessee upon the Leased Premises, the Licensed Premises, the Op-

tional Licensed Premises, the Assigned Premises, or any part thereof, or to incur any expense or obligation or become liable for any damages whatsoever on account thereof except expense, obligation or damage arising from the sole negligence of City, its officers, agents or employees.

11. *INDEMNIFICATION.* Lessee shall indemnify, hold, protect and save harmless the City of Long Beach and any and all of its boards, officers and employees, from and against any and all actions, suits, proceedings, claims and demands, loss, liens, cost, expense and liability, of any kind or nature whatsoever, for injury to or death of persons or damage to property (including property owned by said City), which may be brought, made, filed against, imposed upon or sustained by said City, its boards, officers or employees, and which, in whole or in part, arise from or are attributable to or are caused, directly or indirectly, through negligence or otherwise, by the use of, or operations conducted upon, the Leased Premises, the Licensed Premises, the Optional Licensed Premises, the Assigned Premises or any portions thereof, or all, whether such use or operation be made or performed by Lessee, its officers, agents or employees, or by any person or persons acting with the knowledge and consent, express or implied, of Lessee, except claims and liabilities arising from the sole negligence of City, its officers, agents or employees.

12. *DESTRUCTION OR DAMAGE TO LESSEE'S IMPROVEMENTS.* In the event of destruction or damage to the improvements constructed, erected or installed by Lessee hereunder, by fire or any of the hazards covered by a standard form of fire insurance policy bearing an extended coverage endorsement, or by any other cause, said improvements shall be restored by Lessee, with reasonable diligence, to a condition suitable for Lessee's use; or Lessee, at its option, shall have the right to terminate this Agreement by written notice to City. In the event Lessee exercises its option to terminate this Agreement, or should

Lessee fail to restore said improvements with reasonable diligence, the Leased Premises and pipeline rights of way shall be restored as herein provided in Paragraph 9, and Lessee agrees to surrender all of said Premises to City.

13. *RIGHTS OF WAY AND ENCUMBRANCES.* This license and permit is granted subject to rights of way and entry upon the Leased, Licensed and Assigned Premises for the installation, relocation, removal, operation, and maintenance of sewers, pipelines, conduits and telephone, telegraph, light, heat or power lines, whether underground or overhead, as may from time to time be determined by the Board of Harbor Commissioners, as provided in subsection (f) of Section 229a of the Charter of the City of Long Beach. Said rights of way shall be so located that a minimum of interference with Lessee's use of the Leased, Licensed and Assigned Premises is encountered.

• • •

16. *UTILITY SERVICES.* Lessee shall provide, at its own expense, all utility installations and services required by Lessee upon the Leased Premises, including connections to the nearest gas, sewer, telephone, electric and water lines at points designated by City, and Lessee shall pay, before delinquent, all utility costs and charges required or used by it in connection with its use of the Leased, Licensed and Assigned Premises.

• • •

IN WITNESS WHEREOF, the parties hereto have caused these presents to be duly executed with all the formalities required by law on the respective dates set forth opposite their signatures:

[Subscriptions and attachments omitted in printing]

COUNTY OF LOS ANGELES LEASE

LEASE

THIS LEASE Made this day of , 1961, by the County of Los Angeles, hereinafter called "County", and [name of lessee deleted in original], hereinafter called "Lessee," WITNESSETH:

That in consideration of the terms, conditions, and covenants herein contained, to be kept and performed by the parties hereto and the strict, prompt and punctual performance of each of the terms, conditions, and covenants by Lessee on his part agreed to be kept and performed, County by these presents does lease and demise unto Lessee, and Lessee by these presents does lease, hire, and take from County the following described parcel or parcels of land or water, consisting of a total of 297,500 square feet and situated in the Marina del Rey Small Craft Harbor of the County of Los Angeles, State of California, more particularly described as follows, to-wit: Parcel Number Fourteen (14) more particularly described in Exhibit "A" attached hereto and incorporated herein.

TO HAVE AND TO HOLD said leased premises for the term of this lease and upon terms and conditions as follows:

1. DEFINITION OF TERMS

The following words have in this lease the significance attached to them in this paragraph, unless otherwise apparent from the context:

"BOARD" means the Board of Supervisors of the County of Los Angeles.

"COUNTY" means the County of Los Angeles.

"DEPARTMENT" means the Department of Small Craft Harbors of the County of Los Angeles.

"DIRECTOR" means the Director of the Department of Small Craft Harbors of the County of Los Angeles.

The words "SHALL" and "WILL" are mandatory and the word "MAY" is permissive.

The word "SECTION" means a section of this lease.

The word "PROPERTY" includes both real and personal property.

The word "SUBLEASE" includes licensee, permittee, concessionaire, assignee or transferee of or from Lessee with respect to any interest in the property demised under this lease.

• • •

2. TERM.

The term of this lease shall be sixty (60) years, commencing upon the eighth (8th) day of June A.D. 1961.

3. PURPOSE OR USE OF PROPERTY.

The leased premises shall be used only and exclusively for anchorage and related uses and for purposes incidental thereto; and for no other purposes whatsoever without the written approval of County; the uses and purposes above listed are set forth to define the maximum contemplated scope of permissible uses and purposes, and their enumeration is not intended to be authorization for any specific use or purpose.

It is also expressly understood that the uses of the said premises which are permitted hereinabove do *not* include the following:

A—Fuel sales

B—Repairs other than minor servicing or owner maintenance

C—Live bait sales

D—Sportfishing or charter boat activity

There shall be no actual construction upon said premises except that required by Sections 5 and 6 hereof, and except that additional construction allowed upon approval of Director pursuant to Section 9 hereof.

The Lessee shall conform to and abide by all rules and regulations relating to the operations herein authorized and shall be subject at all times to the rules and regulations adopted by the Los Angeles County Department of Forester and Fire Warden or the Department, ordinances of the County of Los Angeles, and all Statutes and administrative rules and regulations of the Federal Government and the State of California applicable thereto, and where permits are required for such operations, the same must first be had and obtained from the Los Angeles County Forester and Fire Warden or other regulatory body having jurisdiction thereof before such operations are undertaken.

4. ACTIVE PUBLIC USE.

The ultimate object of this lease is the complete and continuous use of the premises herein demised by and for the benefit of the public, without discrimination as to race or religion, the immediate object being the development and realization of the greatest possible revenue therefrom. It is agreed that said immediate and ultimate objects are consistent and compatible. Accordingly, Lessee covenants and agrees that he will operate said premises fully and continuously to the end that the public may enjoy maximum benefits and County may obtain maximum revenue therefrom.

• • •

5. PLANS AND SPECIFICATIONS FOR REQUIRED CONSTRUCTION.

Prior to commencing construction and within one hundred twenty (120) days after the commencement of the term of this lease, for water uses and sanitary facilities required thereby, and one hundred twenty (120) days after the commencement of the term of this lease and for uses other than water uses and sanitary facilities required thereby, Lessee shall file with Department six (6) sets of final plans and specifications for the construction of the following improvements upon the aforesaid premises: anchorage and related

uses the cost of which land and water improvements shall not be less than the total sum of Five hundred seventy thousand and 00/100 Dollars ($570,000.00) in combination with Parcels Eleven (11) and Thirteen (13).

Such final plans and specifications shall conform to the minimum standards of construction and architectural treatment for Marina del Rey Small Craft Harbor as adopted by the Board on January 3, 1961, and shall be subject to approval by Director and the County Engineer. No construction shall begin until said Director and Engineer have approved said final plans and specifications.

No modification of the approved plans and specifications or of said improvements, including landscaping, shall be made by Lessee without the prior approval of said Director and Engineer.

6. REQUIRED CONSTRUCTION SCHEDULE.

Lessee expressly covenants and agrees that within Forty-five (45) days after the approval of the final plans and specifications for water uses and sanitary facilities required thereby as provided for in Section 5 and that within Sixty (60) days after the approval of final plans and specifications for uses other than water uses and sanitary facilities required thereby as provided for in Section 5, Lessee shall in good faith commence construction of the improvements described therein, including required underground laterals for power, light, telephone, television, sewer, water (including fire lines) and gas lines, and landscaping, in accordance with said approved plans and specifications, and shall diligently prosecute such construction and shall complete the same not later than Three hundred (300) days thereafter for water uses and sanitary facilities required thereby and Seven hundred thirty (730) days thereafter for uses other than water uses and sanitary facilities required thereby; provided that any delay in construction due to fire, earth-

quake, war, labor dispute, or other event beyond control of Lessee shall extent the time in which said construction must be completed by the length of time of such delay.

Failure of Lessee to commence said work within said time shall, upon written notice thereof to Lessee by Board, ispo facto effect a forfeiture of this lease and all rights of Lessee thereunder.

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9. ADDITIONAL CONSTRUCTION.

Lessee may, at its own expense, make or construct, or cause to be made or constructed, improvements other than those required by Sections 5 and 6, additions, alterations, repairs, or changes in the leased premises provided such proposed improvements, additions, alterations, repairs, or changes are within the scope of permissible uses set forth in Section 3, and further provided that each specific proposed improvement, addition, alteration, repair, or change must first have the written approval of Director.

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10. LANDSCAPING.

Lessee shall, at its own cost and expense and to the satisfaction of County, install and maintain landscaping upon the demised premises. A general layout of proposed landscaping shall be submitted as part of the plans and specifications for all proposed improvements of the site. This will include the landscaping of all areas between any street and set back lines and such other areas as are necessary to create a pleasing development of the project as a whole. All landscaping plans and layout must have the approval of Director.

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12. GROSS RECEIPTS.

The term "gross receipts" as used in this lease is defined to be all money, cash, receipts, assets, property, or other things of value, including but not limited to, gross charges,

sales, rentals, fees, and commissions made or earned, and all gross sums received or earned by Lessee, his assignees, sublessees, licensees, permittees, or concessionaires, whether collected or accrued, from any business, use or occupation, or any combination thereof, originating, transacted, or performed, in whole or in part, on the premises, including but not limited to, rental, the rendition or supplying of services, and the sale of goods, wares, or merchandise; less sales and excise taxes applicable thereto, required to be collected by Lessee, his assignees, sublessees, licensees, and permittees in connection with the rendering or supplying of services or goods, wares, or merchandise.

There shall be no deduction from gross receipts for any overhead or cost or expense of operation, such as, but without limitation to, salaries, wages, cost of goods, interest, debt amortization, discount, collection, credit card and bad debt charges, insurance, and taxes, except as specifically provided for herein.

Gross receipts shall include the amount of any manufacturer's or importer's excise tax included in the prices of any property or material sold, even though the manufacturer or importer is also the retailer thereof, and it is immaterial whether the amount of such excise tax is stated as a separate charge. Gross receipts, however, shall not include Federal, State, Municipal or other taxes collected from the consumer (regardless of whether the amount thereof is stated to the consumer as a separate charge) and paid periodically by Lessee to a governmental agency, accompanied by a tax return or statement, but the amount of such taxes shall be shown on the books and records elsewhere herein required to be maintained.

13. SQUARE FOOT AND HOLDING RENTALS.

Lessee shall pay to County an annual square foot rental in twelve (12) equal monthly installments. Said installments shall be due and payable in advance upon the first

day of each calendar month, starting with the calendar month next succeeding the date of substantial completion of the improvements required to be constructed pursuant to Sections 5 and 6, or starting with the calendar month next succeeding the commencement of use by the public of any of the improvements required to be constructed pursuant to Sections 5 and 6 or of any portion of the premises herein demised.

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The aforesaid annual square foot rental for the whole of the premises herein demised shall be eight and one-half cents ($0.085) per square foot of water area and eight and one-half cents ($0.085) per square foot of land area, or the total of Twenty-five thousand two hundred eighty-seven and 50/100 Dollars ($25,287.50).

Prior to the start of square foot rental payments as in this section above provided for, Lessee shall pay to County each month in advance a "holding rental" consisting of one-third of the contemplated total monthly installment of square foot rental, starting on the eighth (8th) day of June, 1961. In the event of the start of proportionate square foot rentals under a program of progressive completion, as in this section above provided for, the "holding rental" shall be abated for that portion of the completed improvements and adjoining area thus made subject to square foot rental.

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14. PERCENTAGE RENTALS.

The square foot rental agreed upon in Section 13 is a minimum rental, payable in lawful money of the United States. The money received as square foot rental for any calendar month shall be applied to the payment of the percentage rental for said calendar month as provided for in this Section 14.

Within fifteen (15) days after the close of each and every calendar month of the term hereof, Lessee shall pay to County a sum in like money, less the amount of the monthly

installment of annual square foot rental previously paid for said calendar month under Section 13, and during the first five years of the term hereof, also less the credit for improvements hereinafter in this Section 14 provided for, equal to the total of the following for said previous calendar month:

(a) TWENTY Per Cent (20%) of gross receipts from the rental of boat slips, anchorage tie-ups, or storage areas;

(b) TWENTY-FIVE Per Cent (25%) of gross receipts from the launching and retrieving of small boats;

(c) TWENTY-FIVE Per Cent (25%) of gross receipts from the dry storage of boats;

(d) SIX Per Cent (6%) of gross receipts from sales of used boats, ship chandlery supplies, fishing tackle, paints, varnishes, and similar commodities, and from commissions from the sale of new boats;

(e) SIX Per Cent (6%) of gross receipts from boat haulout, repair, painting, and similar activities;

(f) TWENTY Per Cent (20%) of gross receipts from insurance sales or boat sale brokerages;

(g) TWO Cents ($0.02) per each gallon of gasoline sold;

(h) ONE AND ONE-HALF Cents ($0.015) per each gal. of diesel fuel sold;

(i) THREE Cents ($0.03) per each gal. of mixed fuel sold;

(j) FIVE Per Cent (5%) of gross receipts from sale of petroleum or fuel products other than those covered by subparagraphs (g), (h), and (i) above;

(k) FIVE Per Cent (5%) of gross receipts from the sale of food or food products and alcoholic or other beverages served on the demised premises or prepared on the premises and served off the premises;

(l) SIX Per Cent (6%) of gross receipts from the sale of packaged liquor;

(m) TEN Per Cent (10%) of gross receipts from the sale of alcoholic or other beverages prepared and served on the demised premises or prepared on the premises and served off the premises when no food or food products are prepared and served therewith;

(n) FIFTEEN Per Cent (15%) of gross receipts from club initiation fees and club dues;

(o) FIFTEEN Per Cent (15%) of gross receipts from the rental of hotel rooms, guest rooms, meeting rooms, or other similar space;

(p) TWENTY Per Cent (20%) of gross receipts from rentals or other fees charged for use of trailer-cabana sites, motels, boatels, and cabanas;

(q) TWENTY Per Cent (20%) of gross receipts from parking fees;

(r) SIX Per Cent (6%) of gross receipts from the operation of sports fishing boats;

(s) SIX Per Cent (6%) of gross receipts from miscellaneous activities such as sportswear shops, beauty shops, specialty food shops, and gift shops;

(t) FIVE Per Cent (5%) of gross receipts from coin vending machines;

(u) TWENTY-FIVE Per Cent (25%) of gross receipts received by Lessee from the telephone company as compensation for pay telephones located on the leasehold;

(v) TWENTY Per Cent (20%) of gross receipts from any and all service charges or labor charges;

(w) TEN Per Cent (10%) of gross receipts from apartment rentals;

(x) FIVE Per Cent (5%) of gross receipts from all other activities carried on on said premises.

During the first five (5) years of the term hereof, Lessee shall be allowed a credit each calendar month upon the payment of the percentage rental hereinbefore in this Section 14 required, in the amount of one-half of the total of said percentage rental due hereunder for said calendar month in excess of the minimum square foot rental installment previously paid for said calendar month; the total of said monthly credits shall not exceed the minimum required money expenditure for improvements specified and required to be constructed pursuant to Section 5 hereof.

If the total of the percentages of gross receipts agreed to be paid by Lessee for any calendar year exceeds the sum of the Square Foot Rental, but is less than the total of monthly payments actually made by the Lessee for said calendar year, Lessee shall be allowed credit at the end of said calendar year for the difference between the said total of percentages agreed to be paid and said total of payments actually made.

If any of the items, services, goods or facilities mentioned in subparagraphs (a) through (x) of this paragraph be provided by Lessee or its sublessees, assignees, licensees, concessionaires, or permittees, without the usual charges therefor according to the price list or schedule provided for in Section 16, or if said usual charge be not collected in full, the proper amount thereof shall nevertheless be included in the gross receipts reported by Lessee and its sublessees, assignees, licensees, concessionaires, and permittees, and the applicable percentage thereof paid to County.

15. RENT RENEGOTIATION AND ARBITRATION.

The square foot and percentage rentals hereinbefore provided for shall apply to and be in effect for the first five (5) years of the term hereof. The square foot and percentage rentals for the remainder of said term shall,

be determined by renegotiation and arbitration, as hereinafter provided, without limit as to amount, except that at all times during the term of this lease the total rentals shall be in such amount that the property hereby demised shall produce at least its proportionate share of the revenue required by Government Code, Section 26360 and the revenue required to meet the obligations of County under that certain Revenue Bond Resolution of the County Board of Supervisors referred to in Section 46; and, notwithstanding the renegotiation and arbitration provisions of this Section 15, the minimum rental under this lease shall never be lower than the product of six cents ($0.06) multiplied by the square feet of the leased land and water area.

The rentals for the remainder of said term shall be readjusted as follows for each succeeding period of ten (10) years;

Such rentals shall be readjusted by Lessee and County, in accordance with standards of and for fair market value hereinafter set forth, at some time not more than nine (9) months and not less than six (6) months before the beginning of each such ten-year period; in the event Lessee and County cannot agree upon the readjustment of rentals, the same shall be determined by a board of three (3) real estate appraisers, one of whom shall be appointed by County, one by Lessee, and the third by the two (2) appraisers so appointed.

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The board of real estate appraisers shall, immediately upon the appointment of its members, enter upon the discharge of its duties and determine the amount of readjusted rentals and notify the parties thereof in writing within sixty (60) days after its appointment. A majority of the real estate appraisers who agree thereto may readjust such rentals, such readjustment to be based upon a determination of the fair market value of this lease, taking into consideration the uses permitted thereunder and all of

its terms, conditions, and restrictions, franchise value, earning power, and all of the factors and data relating to such value required or proper to be considered in determining the fair market value of leaseholds under the laws of eminent domain in the State of California; also provided that at all times during the term of this lease the total of such rentals shall be in such amount that the property hereby demised shall produce at least its proportionate share of the revenue required by Government Code, Section 26360 and the revenue required to meet the obligations of County under that certain Revenue Bond Resolution of the County Board of Supervisors referred to in Section 46; and, notwithstanding the renegotiation and arbitration provisions of this Section 15, the minimum rental under this lease shall never be lower than the product of six cents ($0.06) multiplied by the square feet of the leased land and water area. * * *

18. DISPOSITION OF INSTALLATIONS OR IMPROVEMENTS.

Title to all structures, buildings, or improvements constructed by Lessee upon the demised premises, and all alterations, additions or betterments thereto, shall remain in Lessee until termination of this lease; and upon such termination, whether by expiration of the term hereof, cancellation for good cause, forfeiture, or otherwise, title to said structures, buildings, improvements, and all alterations, additions, or betterments thereto, and all improvements made to or upon said premises, shall, at the option of County, vest in County without compensation therefor to Lessee, and said structures, buildings, and improvements shall remain upon and be surrendered with the premises as part thereof.

However, County may require Lessee, prior to the expiration of the term of this lease, or any sooner termination of this lease, to remove, at the sole cost and expense of Les-

see, all works, structures, and improvements of any kind whatsoever placed or maintained on said premises, whether below, on, or above the ground by Lessee or others, including, but not limited to, wharves, piers, docks, slips, bulkheads, seawalls, piling, channels, concrete foundations, structures, and buildings; and Lessee shall, upon the expiration of the term of this lease or upon any sooner termination of this lease, immediately restore, and quit, and peacefully surrender possession of, said premises to County in at least as good and usable a condition, acceptable to the Director, as the same were in at the time of first occupation thereof by Lessee or others, ordinary wear and tear excepted, and shall, in any event, leave the surface of the ground in a level, graded condition, with no excavations, holes, hollows, hills, or humps. Should Lessee fail to so remove said structures, buildings, and improvements and restore said premises, County may sell, remove, or demolish the same, in event of which sale, removal, or demolition Lessee shall reimburse County for any cost or expense thereof in excess of any consideration received by County as a result of such sale, removal, or demolition.

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Title to all utility lines, switchboards, transformer vaults, and all other service facilities constructed or installed by Lessee upon the demised premises shall vest in County upon construction or installation.

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26. INDEMNITY CLAUSE AND CASUALTY INSURANCE.

Lessee shall at all times relieve, indemnify, protect and save harmless County and its Boards, officers, agents, and employees from any and all claims and liability, including expenses incurred in defending against the same, for the death of or injury to persons or damage to property, including property owned or controlled by or in the possession of County, or any of its officers, agents, or employees,

that may in whole or in part arise from or be caused by (a) the operation, maintenance, use, or occupation of the herein demised premises by Lessee, (b) the acts, omissions, or negligence of Lessee, its agents, officers, employees, or permittees, or (c) the failure of Lessee to observe or abide by any of the terms and conditions of this lease or any applicable law, ordinance, rule, or regulation; the obligation of Lessee to so relieve, indemnify, protect and save harmless County, and each of its Boards, officers, and employees, shall continue during any periods of occupancy of or holding over by Lessee, its agents, officers, employees, or permittees, beyond the expiration or other termination of this lease.

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35. MAINTENANCE OF PREMISES.

Lessee shall give prompt notice to County of any fire or damage that may occur from any cause whatsoever. Lessee shall, to the satisfaction of Director, keep and maintain the leased premises and all improvements of any kind which may be erected, installed, or made thereon by Lessee in good and substantial repair and condition, including painting, and shall make all necessary repairs and alterations thereto.

County shall not at any time be required to make any improvements or repairs whatsoever except that County may at its sole discretion do any necessary dredging, filling, grading, slope protecting, construction of sea walls, or repair of water system, sewer facilities, roads, or other County facilities in order to protect the leased premises or the adjoining premises.

Lessee expressly agrees to maintain the leasehold in a safe, clean, wholesome, and sanitary condition, to the complete satisfaction of Director and in compliance with all applicable law. Lessee further agrees to provide proper containers for trash and garbage and to keep the demised premises, both land and water areas thereof, free and clear

of rubbish and litter. County shall have the right to enter upon and inspect the said premises at any time for cleanliness and safety.

36. REPAIRS BY COUNTY.

Lessee shall from time to time make any and all necessary repairs to or replacement of any equipment, structure, structures, or other physical improvements, upon the demised premises, in order to comply with any and all regulations, laws, or ordinances of the State of California, County of Los Angeles, City of Los Angeles, or other governmental body, which may be applicable.

If Lessee fails to make any such repairs or replacements as required, County may notify Lessee of said default in writing, and should Lessee fail to cure said default and make said repairs or replacements within a reasonable time as established by County, County may make such repairs or replacements and the cost thereof, including, but not limited to, the cost of labor, materials, and equipment, shall be charged against Lessee and shall be paid to County by Lessee.

37. SPECIAL SERVICES.

In addition to the rental charges as herein provided, Lessee shall pay all service charges for furnishing water, power, sewage disposal, light, telephone service, garbage, and trash collection, and all other utilities, to said premises.

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41. RULES AND REGULATIONS.

Leases shall abide by all applicable rules, regulations, resolutions, ordinances, and statutes of the County of Los Angeles, the City of Los Angeles, and the State of California, or other governmental body, where applicable, respecting the use, operation, maintenance, repair, or improvement of the leased premises and equipment, and shall

pay for any and all licenses required in connection with the use, operation, maintenance, repair, or improvement of the leased premises.

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[Subscriptions omitted in original]

STUDY BY
URBAN PROPERTY RESEARCH COMPANY

Study of Land Rental Rates and Returns
Being Received on Other High Grade Investments for
State of California States Land Commission

[Letterhead]

January 31, 1975

State of California
State Lands Commission
1807 13th Street
Sacramento, California 95814

Attention: Leslie H. Grimes

SUBJECT: Study of Land Rental Rates

Gentlemen:

In accordance with your authorization, I have prepared a study involving review and analysis of rental rates being secured on commercial, industrial and marina land. The study includes various recommendations together with the reasoning upon which these recommendations are predicated.

Also considered in the study is an analysis and comparison of rates of return being received from Aaa bonds and from land leases.

Respectfully Submitted,

URBAN PROPERTY
RESEARCH COMPANY

/s/ THOMAS W. CLARK, JR.
Thomas W. Clark, Jr., M.A.I.

TWC/jn

SUMMARY OF CONCLUSIONS AND RECOMMENDATIONS

I. On commercial and industrial land leases where the annual rental is established by a fair market value appraisal to which is applied a rate of return, it is recommended that the annual rental rate of return be 8%.

II. Analysis and comparison of the difference between land lease rates and interest rates being secured on Aaa bonds indicate that the composition of the rate of return is different, and there is not necessarily a significant correlation between the two. It is recommended, therefore, that interest rates on Aaa bonds not be used to determine a rental rate for land leases.

III. It is recommended that serious consideration be given to applying the percentage of gross sales to establish the rental rate for large marina lands and that a simplified method be established using county assessor data to estimate land rents for small "Mom and Pop" marinas.

IV. It is recommended that a review of current rental rates be made every two to four years and that provisions be made in leases for increasing annual rentals either by reevaluation of the property or by tieing the rent to some governmental index.

CERTIFICATION

The undersigned does hereby certify that in this study:

1. I have no personal interest or bias with respect to the subject matter of this report or the parties involved.

2. To the best of my knowledge and belief the statement of fact contained in this study upon which the analyses, opinions and conclusions expressed are based are true and correct.

3. No one other than the undersigned prepared the analyses, conclusions and opinions concerning real estate that are set forth in this report.

/s/ THOMAS W. CLARK, JR.
Thomas W. Clark, Jr., M.A.I.

SCOPE OF STUDY

The purpose of this study is to aid the staff of the State Lands Commission in estimating a reasonable rental rate or rate of return to be applied to land leases involving state lands under their jurisdiction.

Primary emphasis has been on an investigation of market data involving land leases in both the public and private sector of the economy. The majority of the leases, however, are of lands owned by public agencies such as port districts, cities and the State of California since they have more land available for lease than private corporations. Also included in the report is market data relating to percentage leases with regard to marina land. This data can be related to marina land leases in the Sacramento-San Joaquin Delta and at Lake Tahoe.

A comparison of yields being earned on high grade corporate and governmental bonds has also been analyzed and an attempt made to correlate the return on this type of investment with those being received from land leases. Included in this section are some of the current economic theories relating to the real value of money, the effect of inflation and risk. While these theories yield some light on a proper rate of return for a given type investment and tend to explain the thinking of investors in the money market, it is difficult to directly correlate this data to a fair rate of return for leased lands.

The market and economic data investigated has been correlated and analyzed and recommendations made as to various approaches that are applicable to developing reasonable land rental rates and means of reviewing and updating the data.

ANALYSIS OF CURRENT LAND LEASES

Major emphasis in this study has been to collect and analyze market data relating to current land leases by both public agencies and private companies. In addition, the real estate representatives handling these transactions were in-